

APPENDIX F

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
_____ DIVISION

IN RE:)	CASE NO.
)	
)	CHAPTER 11
)	
Debtor.)	

**EMERGENCY ORDER UNDER SECTION 363(c)(2)(A) APPROVING AGREEMENT
TO USE CASH COLLATERAL BY CONSENT UNDER FED. R. BANKR. P. 4001(d)**

_____ This matter is before the Court on the Emergency Motion of _____ (the "Debtor") for approval of an agreement to use cash collateral. Notice of the Emergency Motion together with notice of the preliminary hearing on the Emergency Motion has been given and served by the Debtor to (1) the Bankruptcy Administrator, (2) The District Director of the Internal Revenue Service, (3) _____ (the "Secured Creditor") (4) any committee appointed under Section 1102 if one has been appointed, and if not, to the twenty (20) largest unsecured creditors on the Rule 1007 (d) list. The Court considered the Emergency Motion; and after due deliberation and good and sufficient cause appearing therefore, it is hereby found and determined:

(A) **NOTICE AND HEARING.** Notice of the Emergency Motion has been given and the motion has been served in accordance with Section 102(1) and Fed. R. Bankr. P. 4001(d), which notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested in the Emergency Motion.

(B) **CHAPTER 11 FILED.** Debtor filed its Petition under Chapter 11 of the Bankruptcy Code on _____ ("the Petition Date"), and is presently operating as a Debtor in Possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

(C) **PRE-PETITION DEBT.** The Secured Creditor is asserting a claim against Debtor in the amount of \$ _____ (the "Pre-Petition Debt"), subject to later determination (after objections, if any, by any party in interest other than the Chapter 11 Debtor in Possession) upon the filing of a properly perfected proof of claim or deemed filed

under Section 1111(a) or filed by Debtor or Trustee under Rule 3004.

(D) **PRE-PETITION COLLATERAL**. The Secured Creditor made a prima facie showing that it has a properly perfected lien on the Debtor's property (including proceeds) at the commencement of the case and that has a fair market value in the light of the purpose of the valuation and of the proposed disposition or use of such property by the Debtor as a going concern as follows:

<u>TYPE OF COLLATERAL</u>	<u>ESTIMATED FAIR MARKET VALUE</u>
1. CASH COLLATERAL	\$ _____
_____ 2. INVENTORY	\$ _____
3. ACCOUNTS	\$ _____
4. OTHER COLLATERAL CONSTITUTING, OR WHICH MAY RESULT IN CASH COLLATERAL	\$ _____
TOTAL	\$ _____

E. **CASH COLLATERAL**. "Cash Collateral" as defined by Section 363(a) of the Bankruptcy Code includes pre-petition proceeds, products, offspring, rents, or profits of the pre-petition security interest as provided by Section 552(b) and as the term "proceeds" is described in Ala. Code, §7-9-306.

F. **NECESSITY AND BEST INTEREST**. The Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11. The Debtor must have immediate authority to use cash collateral as defined herein in order to continue its business operations without interruption toward the objective of formulating an effective plan of reorganization for the benefit of all its creditors. Debtor's use of cash collateral to the extent and on the terms and conditions set forth herein is necessary to an effective reorganization and in the best interest of creditors and of the Estate. The amount of cash collateral authorized to be used is only that amount necessary to avoid immediate and irreparable harm to the Estate pending a final hearing or entry of an order not to exceed \$ _____ per _____. There is a reasonable possibility of a successful reorganization within a reasonable time.

G. **POST-PETITION COLLATERAL EQUALS PRE-PETITION COLLATERAL USED**. Debtor has made a prima facie showing that the aggregate value of its (1) post-petition cash collateral, (2) post-petition

inventory, (3) post-petition accounts, (4) other post-petition property of the Debtor constituting or which may result in cash collateral and (5) proceeds thereof at all times shall equal or exceed the amount of pre-petition cash collateral used so that the Secured Creditor is adequately protected.

H. PURPOSES. The Debtor is authorized to use the cash collateral to meet the emergency cash needs of the Debtor, (and such other purposes as may be approved in writing by the Secured Creditor) for the payment of actual expenses of the Debtor necessary to (a) maintain and preserve its assets, (b) continue operation of its business, including payroll, employee expenses, and insurance expenses, and (c) pay the cost of this Chapter 11 case, including professional fees and expenses, provided they are approved by the Court.

The Court having determined there is a reasonable likelihood that the Debtor will prevail upon the merits at the final hearing of the Emergency Motion as required by Section 363(c)(3), and for good cause shown, it is hereby

ORDERED as follows:

1. USE OF CASH COLLATERAL. The Secured Creditor consents and the Debtor is authorized to use cash collateral up to the aggregate amount of \$_____ per _____ to pay the following expenses in accordance with the cash collateral budget attached hereto as Exhibit "A":

- a. the maintenance and preservation of its assets (subject to any Section 506(c) chargeback);
- b. the purchase of replacement inventory;
- c. the continued operation of its business, including but not limited to payroll, employee expenses, and insurance;
- d. all administrative expenses of this Chapter 11 case, provided they are approved by the Court upon proper notice, including Debtor's and Creditors' Committee professional fees and expenses.

2. ADEQUATE PROTECTION. As adequate protection for use of the cash collateral, the Secured Creditor is **GRANTED**:

- a. **Replacement Lien.** A replacement perfected security interest under Section 361(2) to the extent a Secured Creditor's cash collateral is used¹ by Debtor up to the total estimated fair market value of

¹ "Used" being defined as resulting "in a decrease in the value of such entity's interest in such property." See Section 361(2).

the pre-petition collateral of \$_____ (as determined in Paragraph D) and to the extent and with the same priority in Debtor's post-petition collateral, and proceeds thereof, that Secured Creditor held in Debtor's pre-petition collateral.

b. Deemed Perfected The replacement lien granted herein is automatically deemed perfected upon entry of this order. See, Small v. Beverly Bank, 936 F.2d 945 (7th Cir. 1991). Although not required, upon request by the Secured Creditor, Debtor shall execute and deliver to the Secured Creditor any and all UCC Financing Statements, UCC Continuation Statements, Certificates of Title or other instruments or documents considered by the Secured Creditor to be necessary in order to perfect the security interest and liens granted by this Order, and the Secured Creditor is authorized to receive, file and record the foregoing, which actions shall not be deemed a violation of the automatic stay (but the Secured Party shall not make any further charges against Debtor therefore).

c. Periodic Accountings. Debtor shall provide _____ (monthly)(weekly) periodic accountings by Debtor setting forth the cash receipts and disbursements made by the Debtor under this Order. Also, copies of the Chapter 11 monthly operating reports and any other reports reasonably required by the Secured Party shall be provided by the Debtor.

d. Default Hearing. In the event Debtor defaults or violates this Order, the Secured Creditor is entitled to request a hearing within ten (10) days (or if immediate and irreparable injury, loss, or damage, an emergency hearing within 48 hours).

3. **CREDITOR'S RIGHT OF INSPECTION AND AUDIT**. Upon reasonable notice by the Secured Creditor, Debtor shall permit such creditor and any of its agents reasonable and free access to the Debtor's books, records and place of business during normal business hours to verify the existence, condition and location of collateral in which said creditor holds a security interest and to audit Debtor's cash receipts and disbursements.

4. **STIPULATED AMOUNT DUE AND DULY PERFECTED FIRST LIEN**. The Debtor and the Secured Creditor stipulate that the amount due the Secured Creditor is as set forth above (Paragraph C) and that the Secured Creditor holds a duly perfected security lien as of the petition date on the Debtor's (1) cash on hand, (2) inventory and (3) accounts (4) other property set forth above (Paragraph D) and (5) proceeds thereof. This stipulation is only binding on the Secured Creditor and Debtor.

5. **INTERLOCUTORY ORDER AND NO MODIFICATION OF CREDITOR'S ADEQUATE**

PROTECTION. This is an interlocutory order. Except for the stipulation binding on the Debtor and Secured Creditor in Paragraph 4, it may be modified for cause shown on application by the Debtor, the Secured Creditor or any other party in interest on due notice. However, no such modification shall deprive the Secured Creditor of its interest in Debtor's property (pre-petition and post-petition).

FINAL HEARING ORDER

IT IS FURTHER ORDERED, and NO TICE IS HEREBY GIVEN

That any creditor or other interested party having any objection to this Emergency Order shall file with the Clerk of this Court and serve upon counsel for the Debtor on or before the ____ day of ____, [year], at _____ a written objection and shall further advocate said objection at a Final Hearing to be held at ____ o'clock, __.m. on the ____ day of ____ [year], in Courtroom ____ of the United States Courthouse, _____, Alabama. In the event no objections are filed or not advocated at such hearing, the Court may enter the Emergency Order as the Final Order without further notice or hearing in accordance with Fed. R. Bankr. P. 4001(d)(3).